

COMMISSION ON COMMON OWNERSHIP COMMUNITIES
FOR MONTGOMERY COUNTY, MARYLAND

In the matter of:

BRIAN C. WILLARD
8511 Halston Way
Bethesda, Maryland 20814

Complainant

vs.

Case No: 569-O

GLENBROOK VILLAGE
HOMEOWNERS ASSOCIATION
c/o Faller Management Co., Inc.
5307 Randolph Road
Rockville, Maryland 20852

Respondent

DECISION AND ORDER

The above-entitled case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing on October 16, 2002 , pursuant to Chapter 10 B, Sections 10 B-5(i), 10 B-9(a), 10 B-10, 10 B-11(e), 10 B-12 and 10 B-13 of the Montgomery County Code, 1994, as Amended, and the Commission having considered the testimony and evidence of record, finds, determines and orders as follows:

Background

Brian C. Willard, Jr., homeowner and resident of Glenbrook Village Association Homeowners ("the Homeowners Association) who resides at 8511 Halston Way, Bethesda, Maryland 20814 brought an action seeking the Commission find that the Respondent's Board of Directors acted in violation of its governing documents in denying his application for construction of a masonry deck/porch by making an independent determination that was contrary to the Association's Architectural and Environmental Review Committee (hereinafter AERC).

Respondent's position with respect to the Board of Director's determination on the Complainant's application for construction is that its AERC simply made a recommendation to the Board of Directors and that the final authority on all applications rests with the Board of Directors.

This case was not resolved through mediation, and it appears that all procedures and remedies provided in the Respondent's governing documents have been exhausted. The Complaint was brought by the homeowner. On October 16, 2002 the Complainant appeared for the hearing and was represented by counsel, Thomas Rand, Esquire. Robert Thorp, a member of the Board of Directors, was present on behalf of the Homeowner's Association.¹ Glenbrook Village is located in Bethesda, Maryland at Wisconsin Avenue and Jones Bridge Road. The Complainant initially approached Porten Company, the builder of townhouses in Glenbrook Village, to construct a masonry deck/ porch to the rear of his residence. In June of 2000, the Complainant advised Porten Company that he would seek a different contractor to build the masonry deck/ porch. Unfortunately, the architect selected by the Complainant became ill and incapacitated for several months and it was not until April of 2001 that a building permit was issued. Before construction commenced, Complainant was advised that Glenbrook Village had engaged a new management company, Gaffigan Management Corporation (the "management company"). Complaint informed the management company of his intent to construct a masonry deck/porch and provided two signatures of his neighbors approving the construction, design and materials. Complainant was not advised that his application had been submitted to the Board for review for approval nor of the date the Board intended to review his application. On October 24,

¹ Mr. Thorp indicated that although he is a lawyer by training, he is not admitted to the State Bar of Maryland, apparently acknowledging that Maryland law does not allow Associations to be represented by individuals other than Maryland-licensed attorneys in quasi-judicial proceedings.

2001, the Complainant received a letter from Brian Keeler, of the management company notifying him that his request to construct a concrete/masonry deck/porch at the rear of his residence had been denied because of a failure to obtain a third signature from a neighbor and because the proposed modification did not conform with the harmony of external design, color and location in relation to surrounding structures and topography nor in conformity with the design concept for the community. Mr. Keeler further stated in the letter that "... since the Board was acting as the Architectural and Environmental Review Committee, any appeal would be superfluous." The letter directed the Complainant to file a claim with the CCOC for further relief.

In December 2001, Complainant's architect then made inquiry of the Respondent as to what needed to be done to obtain approval. Complainant was directed to contact the newly formed AERC's Chairperson. Thereafter, the Complainant formally submitted an application to the AERC. On March 7, 2002 the AERC approved the application (Complaint's Exhibit 2, Tab7) and "recommended" to the Glenbrook Village Homeowners Association Board of Directors that the Complainant's application for exterior deck to his property was reviewed and found to be in compliance with the architectural by-laws of the Homeowners Association. Parenthetically, the AERC noted that the primary objection to the original proposal that was reviewed by the Board of Directors was that the area underneath to the deck appeared an actual addition to the house. The AERC noted that such was not the case upon a close examination of the architectural plans and drawings.

A Board of Director's meeting was held on April 9, 2002 at which time the Board of Directors considered three applications the AERC had "recommended" for approval. Of the

three applications, two were approved and the Complainant's was denied. The Board of Directors indicated that Complainant's construction lacked in harmony, in external design, color, and location in relation to surrounding structures and topography and in conformity with the design concept for the community. At the following Board meeting on May 10, 2002, the Board considered again the Willard deck proposal. The Board's minutes indicate that the Board did not make any further decision on this topic at that time.

At the hearing, Ms. Lynn Rubin, Chairman of the AERC, provided evidence that there were no written guidelines adopted at the time that the Board had first considered Complainant's construction application. She further observed that the AERC was the committee that specifically investigated whether proposed applications met acceptable construction standards and satisfy the criteria of external design that is in harmony with the community's architecture, color and location in relation to surrounding structures. Her evidence on the issue was that the Committee unanimously agreed that the Complaint's design application satisfactorily fulfilled all criteria.

During the course of the hearing, the Complainant provided photographs of various homes in the community and various wooden deck designs and structures. The hearing panel received all of the evidence, including Exhibit 8 which was an architect's rendering of a drawing of the masonry deck/ porch. Respondent offered evidence on a single issue as to whether the Board of Director's action was in violation of its governing documents in overruling the recommendation of the AERC.

Findings of Fact

Brian Willard is a homeowner in the Glenbrook Village Homeowners Association and was so at all pertinent times pertaining to his application review process. The parties stipulated to the duly recorded Declaration of Covenants, Conditions and Restrictions (the

“Declaration”) and the By-Laws of the Glenbrook Village Homeowners Association, Inc. as the governing documents applicable to the issues in dispute. The Architectural and Environmental Review Committee of the Glenbrook Village Homeowners Association was established pursuant to the governing documents by its Board of Directors sometime after October 2001 and before January 10, 2002, pursuant to Article VI of the Declaration. The Declaration of Covenants provides that no building, deck, fence, wall, equipment, play equipment, or other improvements or structures shall be commenced, directed, placed, moved, altered, or maintained upon the property until the complete plans and specifications shall have been submitted to and approved in writing by the AERC. The AERC is further to consider whether the construction is in harmony with external design, color and location in relation to surrounding structures and topography and conformity with the design concept for the community. Article VI Section 6 of the Declaration provides that the decision of AERC shall be final, except that any applicant who is aggrieved by any action or forbearance from action by the Committee (or by any policy, standard or guidelines established by the Committee) may appeal the decision or action of the AERC to the Board of Directors. Article VI Section 7 of the Declaration provides any applicant dissatisfied with a decision of the AERC may, within 15 days after the rendering of such decision, make an appeal in writing stating their interest to the Board of Directors in the affected lot, the Committee’s action by which they claim to be aggrieved, and any errors they allege were made by the Committee in reaching their decision. Not less than 15, nor more than 60, days after the noting of such an appeal, the Board of Directors shall conduct a hearing on the appeal.

The minutes of the Board of Directors Meeting of September 5, 2001 and October 3, 2001 references the Homeowners Association’s property manager erroneously acting for and on behalf of the Complainant in presenting an application for approval to the Board of Directors for

architectural design approval. No notification that the Board was going to evaluate, consider, or decide on the Complainant's application for approval of a masonry deck/porch was provided to Complainant. No evidence was adduced during the hearing that any particular number of signatures of neighbors was a prerequisite before AERC approval could be considered. Complainant's evidence of photographs, drawings and architectural renderings demonstrated with sufficient clarity that the proposed construction was in harmony with the external design, color and location of the surrounding structures and topography. This evidence also demonstrated conformity with the design concept for the community and that it was at least as well designed as other approved deck construction and in keeping with the nature, type and quality of these previously constructed and approved decks.

Conclusions of Law

Based upon the above findings of fact, the Panel reaches the following conclusions of law:

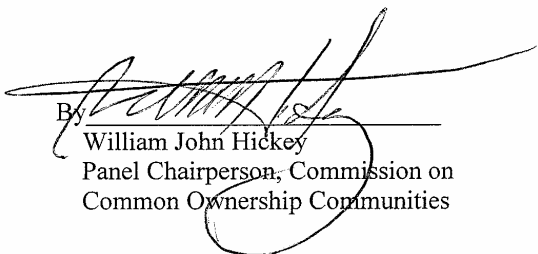
That the initial determination by the Board of Directors on October 3, 2001 did not afford the Complainant an opportunity to adequately present an application for approval of new construction of a deck/porch nor did it provide Complainant with adequate protections for a review and/or appeal of the decision. Upon the formation of the Architectural and Environmental Review Committee, the Complainant initiated properly the application process for approval of new construction pursuant to the Respondent's governing documents. The Architectural and Environmental Review Committee, acting within the authority established in the governing documents, found the Complainant's application to conform to the requirements of Article VI of the Declaration. Pursuant to Article VI Section 6 of the Declaration its

determination on that issue is final. The purported review by the Board of Directors of the AERC decision on April 9, 2002 was erroneous and ultra vires because no appeal was made of the AERC's decision and, in fact, no appeal could have been made as the Applicant/Complainant was apparently satisfied with the AERC's decision. As a consequence, the Board of Director's initial action in denying Complainant's application for exterior construction is null and void and the AERC's determination on March 7, 2002 that the Complainant's application for approval was accepted and approved remains valid. That the Complainant's application submitted to the Glenbrook Village Homeowners Association Architectural and Environmental Review Committee was considered, accepted and approved by that Committee and such approval is a valid determination on that issue.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 4th day of February, 2003, ordered:

That the Complainant is entitled to proceed with construction in keeping within the terms and conditions of the AERC's approval of his application.

By 
William John Hickey
Panel Chairperson, Commission on
Common Ownership Communities

That the decision of the Panel is unanimous, any party aggrieved by the action of the Commission may file an appeal to the Circuit Court of Montgomery County, Maryland within thirty (30) days after the date of the entry of this order and in accordance with the Maryland Rules of Procedure.